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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 24725 of 2004

Between:

K. Madhusudan Reddy, s/o Late Sri K. Pratap Reddy,
R/o 12-12829/6, Kimtee Colony Extn, Street No.1, Lane No.2, Tarnaka, Hyderabad.

..... PETITIONER

AND

The State Bank of India, Rep. by its Asst. General Manager,
Agri Business Branch, Abids, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other writ order or direction, one in the nature of writ declaring that the respondent No.1 is directed to pay the balance amount from out of the sale proceeds after adjusting the compromised amounts along with the interest @ 10.75% till date of recovery as agreed by the parties in view of the compromise letter dated 25-4-2003 by declaring that the respondent bank does not have any rights to initiate the recovery certificate against the petitioner.

Counsel for the Petitioner: SMT.CH.VEDAVANI

Counsel for the Respondent: Smt. Ch. Lakshmi Kumari

The court made the following:

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The petitioner states in pursuance of the One Time Settlement, he paid in all an amount of Rs.2,80,000/-, in that Rs.2,00,000/- to the account of M/s. Venkatadri Farms (P) Ltd. and Rs. 80,000/- to the account of M/s. Shell Foods & Feeds Pvt. Ltd.

The petitioner states that even though the petitioner had time to pay the amounts under One Time Settlement upto 22-4-2004 along with interest at the rate of 10.75%, even before the expiry of the said date, the Bank on 16-2-2004 issued Proclamation of Sale by clubbing the properties of the two accounts, and in pursuance thereof, conducted auction of the mortgaged properties and recovered an amount of Rs.1,01,00,000/-, apart from Rs.2,80,000/- already paid by the petitioner. While so, the Bank issued another Proclamation of Sale on 29-9-2004 in relation to account of M/s. Shell Foods & Feeds Pvt. Ltd. It is this action of the Bank, which the petitioner seeks to challenge in this writ petition.

The learned counsel for the petitioner submits that inasmuch as the Bank accepted the One Time Settlement offered by the petitioner, the extent of dues to be recovered by the Bank from the petitioner stood crystallized as per the terms and conditions agreed therein, and as such, the Bank could not have proceeded to recover the dues on the basis of the Recovery Certificates obtained by it from the Debts Recovery Tribunal. She further submits that since Condition Nos. 1 and 2 of the One Time Settlement provide for recovery of interest on the dues, the Bank could not have invoked Condition No.4 thereof as the exact amount to be recovered under Condition Nos. 1 and 2 have not been determined. She, thus prayed that the Proclamation of Sale in respect of the account of M/s. Shell Foods & Feeds Pvt. Ltd., be quashed and set aside.

According to the own admission of the petitioner, the borrower is a defaulter, and Bank obtained decrees from the Debts Recovery Tribunal, Hyderabad, and Recovery Certificates for recovery of an amount of Rs. 72,22,758-69 from M/s. Venkatadri Farms and Feeds (P) Ltd. and Rs. 47,15,070-81 from M/s. Shell Foods and Feeds Pvt. Ltd. While the petitioner offered a One Time Settlement, which was accepted by the Bank, and as per the terms and conditions of which, the petitioner agreed to pay Rs. 35,38,694/- and Rs.21,44,956/- respectively towards full and final settlement of the loan accounts of M/s. Venkatadri Farms and Feeds (P) Ltd. and M/s. Shell Foods and Feeds Pvt Ltd. And further, as per the said One Time Settlement, the petitioner was required to pay 25% on or before 22-4-2003, failing which interest was to be charged at the rate of Rs.10.75%, and the balance amount was payable by him within one year from the date of the said letter i.e. before 22-4-2004 along with interest at the rate of 10.75%.

Admittedly, pursuant to the One Time Settlement, the petitioner paid only an amount of Rs.2,80,000/- to the credit of both the accounts, and though the petitioner contends that he was entitled to pay the amounts under the One Time Settlement by 22-4-2004, the Bank for the obvious reason that no payment was forthcoming from the petitioner, invoked Condition No.4, wherein it is stated that any deviation of the sanction under RBIOTS will be treated as cancelled, and the Bank reserves the right to recover its dues through legal process already initiated, issued Proclamation of Sale, for recovery of the dues on the basis of the Recovery Certificates obtained by them from the Debts Recovery Tribunal.

I am unable to agree with the contention of the petitioner that since the dues payable by the petitioner to the Bank stood crystallized in terms of the One Time

Settlement, and therefore, the Bank could not have proceeded to recover the dues on the basis of the Recovery Certificates obtained by them from the Debts Recovery Tribunal, and since the Proclamation of Sale issued by the Bank on 16-2-2004, included the properties of both the accounts, the Bank could not have issued the impugned Proclamation of Sale, and more so when the amounts realized through the sale properties under the earlier Proclamation of Sale were sufficient enough to cover the dues in both the accounts. Though the dues payable by the petitioner were crystallized under the One Time Settlement, the fact remains the petitioner has himself, in case of default of the terms and conditions of the One Time Settlement, agreed for invocation by the Bank of its right to cancel the One Time Settlement and proceed to recover its dues through the legal process already initiated, and as the petitioner failed to honour the One Time Settlement, the respondent proceeded to recover the dues from the petitioner on the basis of the Recovery Certificates obtained by them from the Debts Recovery Tribunal, and no exception can be taken thereto. A reading of the contents of the Proclamation of Sale dated 16-2-2004, would disclose that the Bank sought to recover an amount of Rs.72,22,758-69 with interest at the rate of 15.50% from the date of decree obtained by them from the Debts Recovery Tribunal from M/s. Venkatadri Farms (P) Ltd., and this gives an indication that the Bank was proceeding against recovery of the dues standing in the name of M/s. Venkatadri Farms (P) Ltd., and not M/s. Shell Foods & Feeds Pvt. Ltd., and therefore, no exception can be taken to the action of the respondent in proceeding to recover the dues from the petitioner on the basis of the Recovery Certificates obtained by them from the Debts Recovery Tribunal from M/s. Shell Foods & Feeds Pvt. Ltd., by issuing Proclamation of Sale dated 29-9-2004.

Be that as it may, what is the interest that is required to be levied by the Bank on the amounts due by the petitioner to the Bank, what are the actual dues payable by the petitioner to the Bank, and whether the amounts realized through the of properties mortgaged in respect of the loan account of M/s. Venkatadri Farms and Feeds (P) Ltd. were sufficient enough to cover the dues of M/s. Shell Foods and Feeds Pvt. Ltd. also, being disputed questions of fact cannot be gone into in a writ proceeding under Article 226 of the Constitution of India.

In the above view of the matter, the writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 27th January, 2005.

KSR

To

1. The Asst. General Manager, State Bank of India,
Agri Business Branch, Abids, Hyderabad.
2. Two CD copies.